In the Matter of:

State of Oklahoma
v.
Tyson Foods Inc. et al.

Case no. 05-CV-329-GFK-PJC

Errata for Expert Report

April 3, 2009

Prepared for:

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Prepared by:

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The purpose of this errata is to correct errors in analytical data, incorporate inadvertently omitted data, and update illustrations contained in the 01-29-09 Report and Appendix B.

The errata contain the following:

1) Correction of ownership of OK-03 in Report and Appendix B.

2) Correction of data point 31 mg/L to 0.031 mg/L, resulting in updated text and illustrations for AR-22, AR-26, AR-27, and AR-28 in the Report and in Appendix B.

3) Correction of co-located data points that resulted in the recategorization of OK-03, and the addition of text and illustrations to OK-03, AR- 12, AR-13, AR-14, AR-15, AR-16, and AR-30 in the Report and in Appendix B.

4) Correction of town name from Springdale to Springtown in the Report.

5) Update of illustrations in Appendix B.

This errata corrects inadvertent errors. These changes are provided as an attachment with the changed text shown in red color. A complete, updated version of the Report and Appendix B are provided as Report 04-03-09 and Appendix B 04-03-09. My conclusions and opinions remain unchanged.

Summary of Opinions

1. I obtained the State database for the Illinois River watershed (IRW) and evaluated the surface water and sediment data upstream and downstream of the Cargill locations. The purpose of this evaluation did not include determining the definitive causes of elevated phosphorus levels in the IRW, if any. Rather, the purpose was to determine whether State data show if specific Cargill locations were responsible for any elevated phosphorus levels in Lake Tenkiller and/or the IRW.

2. The data provided to me do not demonstrate that individual Cargill contract-grower or Cargill-owned (collectively, Cargill) locations have affected adjacent receiving waters.

3. There have been no site-by-site sampling campaigns and no loading computations to demonstrate that individual Cargill locations have affected surface waters.

4. Based on my analysis, I distinguished five classes of Cargill locations:

   - 7 sites where there is no demonstrable effect on potentially receiving waters because there is a substantial distance (at least four miles) between the site and the nearest environmental data, and thus there are no relevant sample data available: OK-01, OK-03, AR-09, AR-10, AR-11, AR-20, and AR-25;

   - 9 sites where there appears to be no downgradient effect based on the relevant surface water sample data and/or sediment phosphorous (P) baseline data: OK-05, OK-06, AR-07, AR-18, AR-21, AR-23, AR-26, AR-32, and AR-33;

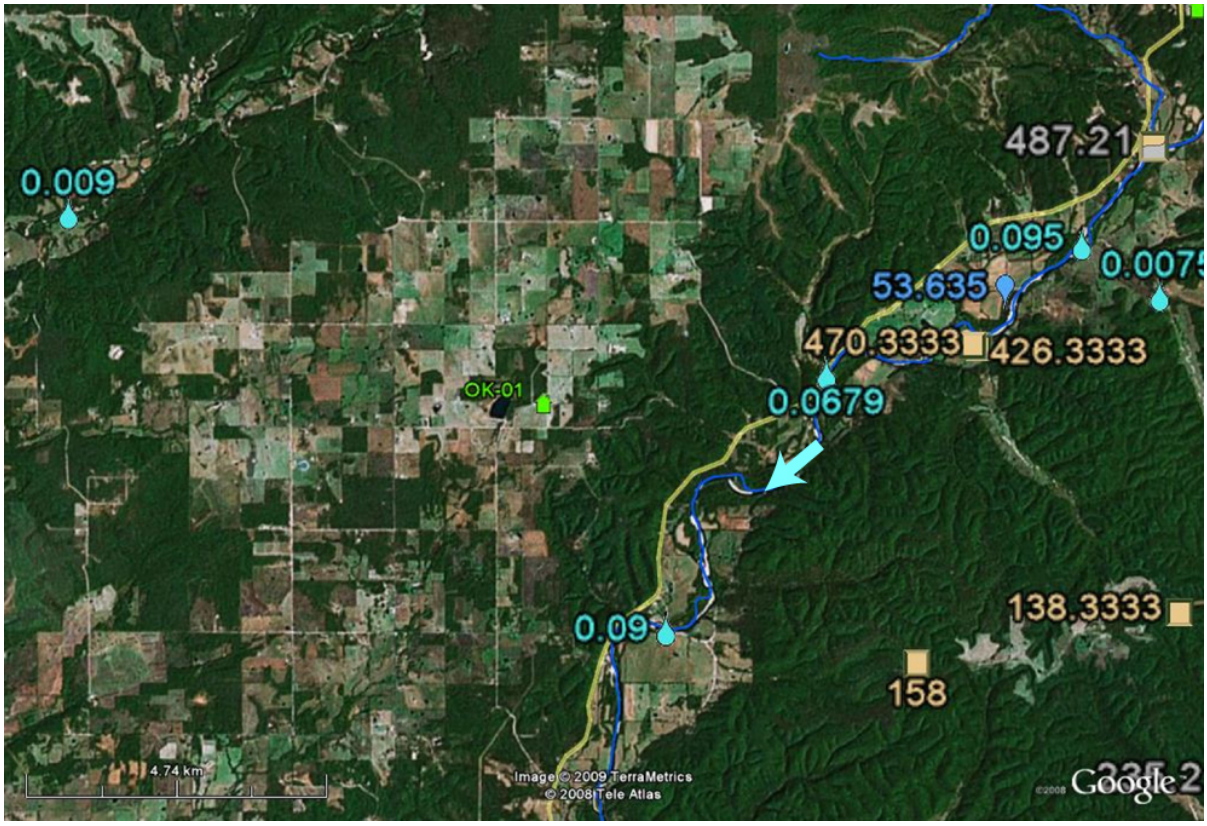
   - 2 sites where P concentrations in the relevant surface water and/or sediment sample data decrease from upstream to downstream of the site, showing no effect on the potentially receiving water: AR-34, and AR-35;

   - 17 sites where P concentrations in the relevant samples are above baseline for sediment samples or elevated above screening level for surface water samples; the sample data reflect natural processes and/or anthropogenic activities contributing P between the Cargill location and the relevant sample location: OK-02, OK-04, AR-08, AR-12, AR-13, AR-14, AR-15, AR-16, AR-17, AR-19, AR-22, AR-24, AR-27, AR-28, AR-29, AR-30, and AR-31; and

   - 0 sites where P concentrations appear affected by Cargill locations.

3.1 Site OK-01

Owner: G. Fisher; Long -94.931750 Lat 36.063483

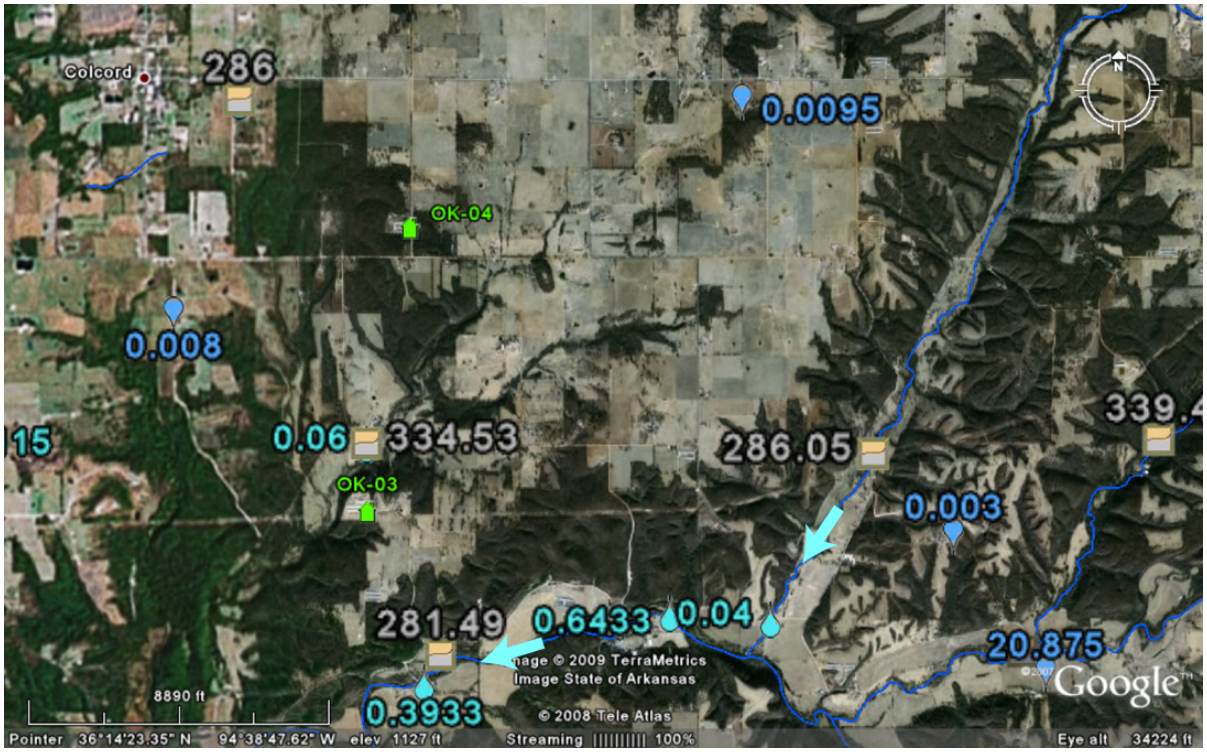


- **Available Data and Analysis:** There are no groundwater, soil, sediment, or surface water samples that have been collected within two miles of site OK-01. Surface water moves from OK-01 to the southwest. Sediment and surface water samples have been collected upgradient, east of the site. The sediment sample, 426 mg/kg P, is less than the 460 mg/kg P baseline criterion (Figure 1). Surface water P increases from 0.068 mg/L to 0.09 mg/L, but the samples, collected more than two miles from OK-01, were not collected along the surface water flow path from the site.

- **Site Effect on the Watershed:** Based on the available data and analysis, there is no evidence that site OK-01 has affected receiving waters or sediments of the IRW.

3.3 Site OK-03

Owner: Mitchell; Long -94.670533 Lat 36.228883

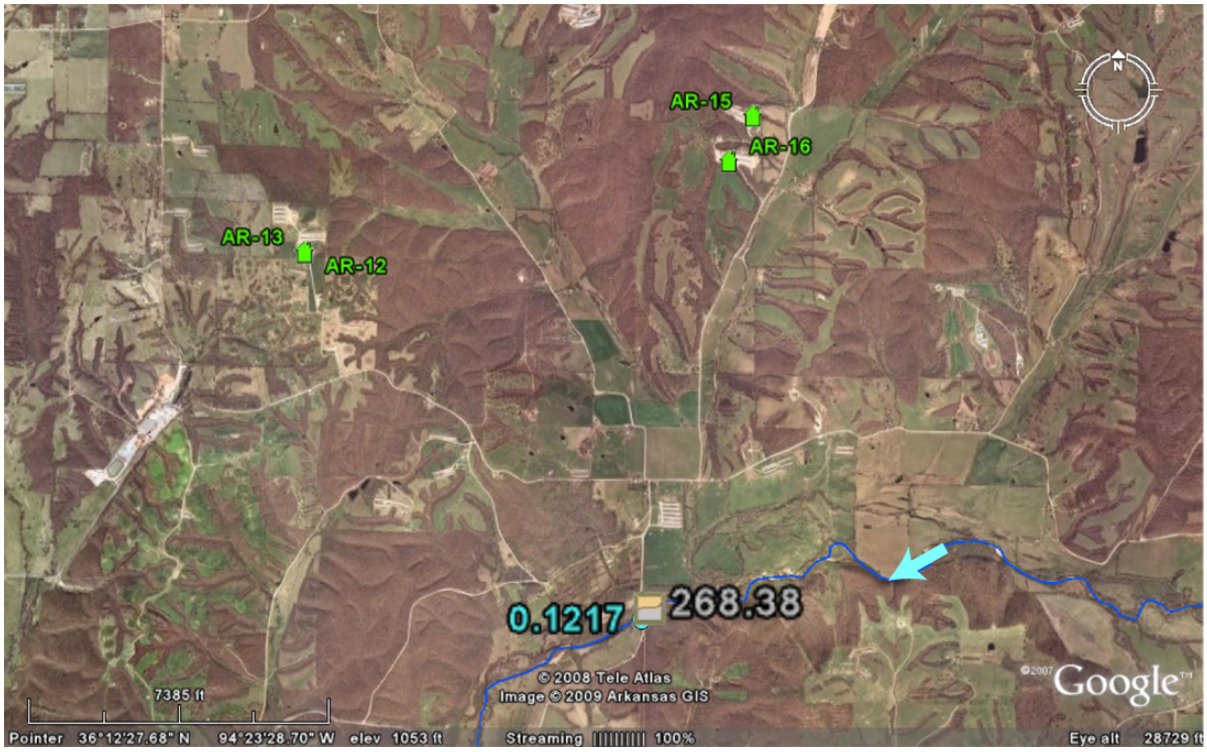


- **Available Data and Analysis:** Groundwater (0.008 mg/L P), co-located upstream sediment (334 mg/kg P), and surface water (0.06 mg/L P) samples collected within 1.5 and 0.5 miles, respectively, of site OK-03 show no apparent effects. There have been no soil samples collected on-site. The proximal sediment sample (282 mg/kg P) and co-located surface water (0.39 mg/L P) are located in a different drainage to OK-03.

- **Site Effect on the Watershed:** Based on the available data and analysis, there is no evidence that site OK-03 has affected receiving waters or sediments of the IRW.

3.12 Site AR-12

Owner: Breeder Farm #4; Long -94.415916 Lat 36.215933

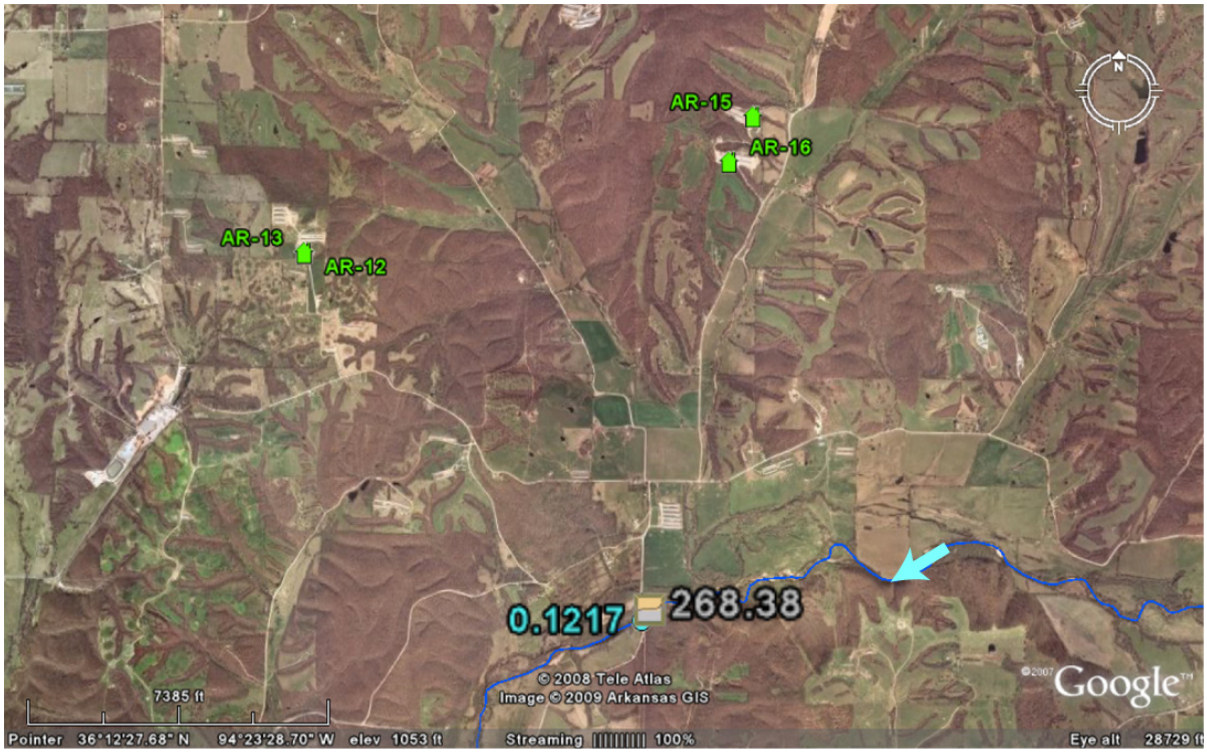


- **Available Data and Analysis:** No soil, groundwater, or edge-of-field samples have been collected on this site. For areas of the site that drain to the southeast, the nearest downstream sediment sample (268 mg/kg P) is >2.5 miles away. The co-located surface water samples (P = 0.122 mg/L and 0.235 mg/L) were collected downgradient from the confluence between the receiving stream and drainage from the AR-12 area. There are other potential anthropogenic P sources between AR-12 and these surface water samples. See Appendix B. The next downstream surface water sample (0.032 mg/L P) was collected >10 miles downstream.

- **Site Effect on the Watershed:** Based on the available data and analysis, site AR-12 has not affected receiving waters or sediments of the IRW.

3.13 Site AR-13

Owner: Breeder Farm #3; Long -94.415916 Lat 36.215933



- **Available Data and Analysis:** No soil, groundwater, or edge-of-field samples have been collected on this site. For areas of the site that drain to the southeast, the nearest downstream sediment sample (268 mg/kg P) is >2.5 miles away. The co-located surface water sample (P = 0.122 mg/L and 0.235 mg/L) were collected downgradient from the confluence between the receiving stream and drainage from the AR-13 area. There are other potential anthropogenic P sources between AR-13 and these surface waters samples. See Appendix B. The next downstream surface water sample (0.032 mg/L P) was collected >10 miles downstream.

- **Site Effect on the Watershed:** Based on the available data and analysis, site AR-13 has not affected receiving waters or sediments of the IRW.

3.14 Site AR-14

Owner: L. Rutherford; Long -94.385133 Lat 36.247800

- **Available Data and Analysis:** No soil, sediment, groundwater, or edge-of-field samples have been collected at the site. Surface water samples in the vicinity of Springtown (~2.7 miles from AR-14) have higher P, but are not along the drainage area for this location. The nearest downstream sediment sample (268 mg/kg P) is more than two miles away. The co-located surface water samples (P = 0.122 mg/L and 0.235 mg/L) were collected downgradient from the confluence between the receiving stream and drainage from the AR-14 area. There are other potential anthropogenic P sources between AR-14 and these surface water samples. See Appendix B. The next downstream surface water sample (0.032 mg/L P) was collected >10 miles downstream.

- **Site Effect on the Watershed:** Based on the available data and analysis, site AR-14 has not affected receiving waters or sediments of the IRW.